

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
_____	)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA)<sup>1</sup> submits its comments through the undersigned in the above-referenced dockets regarding the Petition of AT&T Corp. for Limited Reconsideration<sup>2</sup> of the Commission's Lifeline and Link-Up Order<sup>3</sup> and regarding the amendments to several petitions filed by TracFone Wireless, Inc. seeking designation as an eligible telecommunications carrier (ETC) in Florida, New York, and Virginia.<sup>4</sup> The Commission should deny these requests.

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<sup>1</sup> USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

<sup>2</sup> See *Lifeline and Link-Up*, Petition of AT&T Corp. for Limited Reconsideration, WC Docket No. 03-109 (filed July 21, 2004) (Petition).

<sup>3</sup> See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302 (2004) (Lifeline and Link-Up Order).

<sup>4</sup> See *Federal-State Joint Board on Universal Service, TRACFONE WIRELESS, INC. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed Aug. 16, 2004); *Federal-State Joint Board on Universal Service, TRACFONE WIRELESS, INC. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed Aug. 16, 2004); *Federal-State Joint Board on Universal Service, TRACFONE WIRELESS, INC. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the

## DISCUSSION

AT&T and TracFone ask the Commission to establish separate ETC designation processes – one for the high cost support mechanism and one for the low income support mechanism. TracFone offers no legal argument as to why the Commission should establish separate designation processes, but simply states that it has narrowed the scope of its requests for ETC designations to Lifeline service because it “has determined to offer service specifically targeted at that portion of the consuming public most in need of affordable telecommunications services: those who qualify for assistance under the Commission’s Lifeline program.”<sup>5</sup> On the other hand, AT&T attempts to justify its request, claiming that the high cost and low income support mechanisms serve very different purposes<sup>6</sup> and that the Commission’s policies that require a carrier to be certified as an ETC for both low income and high cost support are not competitively neutral and discourage competitive entry.<sup>7</sup>

USTA opposes these requests to separate the process for becoming designated as an ETC and urges the Commission to deny AT&T’s Petition and the Amended TracFone Petitions. The Telecommunications Act of 1996 (1996 Act) is clear that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>8</sup> Neither section 214(e) nor section 254(e) provides that a carrier can seek a

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Commonwealth of Virginia, CC Docket No. 96-45 (filed Aug. 16, 2004) (collectively, TracFone Amendments or Amended TracFone Petitions).

<sup>5</sup> TracFone Amendments at 2.

<sup>6</sup> See AT&T Petition at 1.

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, Comments of AT&T Corp., CC Docket No. 96-45 at 29-31 (filed Aug. 6, 2004).

<sup>8</sup> 47 U.S.C. §254(e). See also 47 U.S.C. §214(e).

limited ETC designation, qualifying only for support from one of the support mechanisms.

Rather, in order to receive any support – whether it is from the low income mechanism, the high cost mechanism, or both mechanisms – a carrier must comply with the designation process set forth in section 214(e).

With regard to AT&T's arguments for separation of the ETC designation process, the Commission has already made clear in its Lifeline and Link-Up Order that it agreed "with the Joint Board that [it] should decline to establish rules that would provide Lifeline/Link-Up support directly to carriers that are not ETCs. Contrary to AT&T's assertion, establishing such rules would be inconsistent with section 254(e), which states that only ETCs may receive universal service support."<sup>9</sup> The plain requirements of the Act dictate that the Commission deny AT&T's request.

Even if the Act permitted the Commission to do what AT&T is proposing, there are important policy reasons to deny the request. First, bifurcating the ETC designation process as AT&T envisions would enable CETCs to cherry pick low cost Lifeline consumers, siphoning off implicit support embedded in urban, residential retail rates.<sup>10</sup> This would provide a carrier like

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<sup>9</sup> Lifeline and Link-Up Order, ¶54.

<sup>10</sup> In its Ninth Report and Order, the Commission identified many forms of implicit support, explaining that "some state rate designs and, to a lesser extent, the federal interstate access charge system, have provided implicit high-cost support flowing from (1) *urban areas to rural areas*; (2) business customers to residential customers; (3) *vertical services to basic service*; and/or (4) long distance service to local service" and further explaining that "many states have adopted the practice of setting uniform local rates throughout the territory that a given company serves within the state, *thereby enabling incumbent LECs to charge above-cost rates in urban (low-cost) areas to support the below-cost rates they charge in rural (high-cost) areas.*" Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, ¶15 (rel. Nov. 2, 1999) (Ninth Report and Order) (emphasis added). Yet, the Commission also noted the Congressional intent that "federal universal service support mechanisms should, as far as possible, be *explicit*, as well as specific,

AT&T the full rate for the service they provide to the Lifeline customer in an urban area without any obligation to serve low income consumers in high cost rural areas. To provide AT&T or another carrier access to universal service fund support without requiring the carrier to assume the risks associated with carrier of last resort obligations and the requirement to serve any and all customers within its service area undermines the very foundation of the universal service system and the policies underlying section 214(e). Second, bifurcating the ETC designation process might result in incentives for carriers to avoid providing Lifeline service while receiving high cost support. Certainly, providing a pathway for carriers to benefit from receiving federal high cost support without a corresponding obligation to participate in the Lifeline and Link-up programs – and make those benefits available to their customers – would not be in the spirit of long-standing universal service policies.

With regard to TracFone's request for a limited ETC designation so that it can receive universal service support for offering Lifeline service to eligible low income consumers, there is a specific section of the 1996 Act that requires the Commission to deny TracFone's request. Specifically, section 214(e)(1)(A) requires that any carrier designated as an ETC must "offer the services that are supported by Federal universal service support mechanisms under section 254(c), *either using its own facilities or a combination of its own facilities and resale of another*

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predictable, and sufficient to preserve and advance universal service." Ninth Report and Order, ¶18 (emphasis added). Similarly, the Commission cited the Joint Explanatory Statement of the Committee of Conference, that "[t]o the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be *explicit, rather than implicit* as many support mechanisms are today." Ninth Report and Order, fn.32, *citing* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. at 131 (emphasis added).

*carrier's services.*"<sup>11</sup> Yet, TracFone readily admits that it is a reseller of Commercial Mobile Radio Services (CMRS) in the states in which it seeks a limited ETC designation.<sup>12</sup> TracFone does not state that it uses any of its own facilities to provide the services it offers. Moreover, TracFone recognizes that, as a pure reseller, it runs afoul of the facilities requirement of section 214(e)(1)(A) by the simple fact that it has sought forbearance from that requirement.<sup>13</sup>

The Commission has not ruled on the TracFone Forbearance Petition and USTA submits that the Commission should deny it. TracFone disagrees with the Commission's premise that all resold services receive universal service support and that providing universal service support to resellers would result in them receiving double recovery – that is, resale rates that incorporate universal service support to the underlying carrier and then additional universal service support provided directly to the reseller.<sup>14</sup> TracFone maintains that most of the carriers that provide the underlying CMRS service that it resells do not receive universal service support and thus there is

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<sup>11</sup> 47 U.S.C. §214(e)(1)(A) (emphasis added).

<sup>12</sup> See Federal-State Joint Board on *Universal Service, TRACFONE WIRELESS, INC. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed July 21, 2004); *Federal-State Joint Board on Universal Service, TRACFONE WIRELESS, INC. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 8, 2004); *Federal-State Joint Board on Universal Service, TRACFONE WIRELESS, INC. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed July 21, 2004) (collectively TracFone ETC Petitions).

<sup>13</sup> See generally *Federal-State Joint Board on Universal Service*, Petition for Forbearance of TracFone Wireless, Inc., CC Docket No. 96-45 (filed June 8, 2004) (Forbearance Petition).

<sup>14</sup> See TracFone Forbearance Petition at 2.

no double recovery.<sup>15</sup> Even if there is no double recovery – and disregarding the facilities requirement of section 214(e)(1)(A), USTA maintains that if the underlying provider has not been designated as an ETC and does not receive universal service support, then neither should the reseller without some separate showing that it should be designated as an ETC and that it should receive universal service support.

### **CONCLUSION**

For the reasons states above, USTA urges the Commission to deny AT&T's Petition and TracFone's ETC Petitions. The Commission should reiterate its findings in the Lifeline and Link-Up Order, which follows the requirements of the 1996 Act, that any carrier seeking any universal service support – whether from the high cost mechanism, the low income mechanism, or both mechanisms – must obtain ETC status pursuant to section 214(e). The Commission

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<sup>15</sup> *Id.* at 9. Arguably, however, if TracFone were to receive universal service support, it may receive some double recovery because it states that most, but not all, vendors that it uses to provide resold services do not receive universal service support.

should make clear that a carrier cannot obtain a limited ETC designation even if it only seeks support from one of the universal service support mechanisms.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on September 20, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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